

United States District Court
for the
Southern District of New York
Related Case Statement

Full Caption of Later Filed Case:

GEMINI TRUST COMPANY, LLC,

Plaintiff

Case Number

vs.

DIGITAL CURRENCY GROUP, INC. and
BARRY SILBERT,

Defendant

Full Caption of Earlier Filed Case:

(including in bankruptcy appeals the relevant adversary proceeding)

TOBIAS MOELLER-BERTRAM,
individually, and on behalf of all others
similarly situated,

Plaintiff

Case Number

vs.

1:23-cv-02027

GEMINI TRUST COMPANY, LLC, and
DIGITAL CURRENCY GROUP, INC.,

Defendant

Status of Earlier Filed Case:

☐

Closed

(If so, set forth the procedure which resulted in closure, e.g., voluntary dismissal, settlement, court decision. Also, state whether there is an appeal pending.)

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Open

(If so, set forth procedural status and summarize any court rulings.)

The Complaint was filed in *Moeller-Bertram v. Gemini Trust Company, LLC, et al.*, on February 22, 2023 in New York Supreme Court. Defendant Digital Currency Group, Inc. removed the action to this Court on March 9, 2023. On April 7, 2023, Plaintiff moved to remand the action to state court. Judge Lewis J. Liman denied the motion to remand on May 15, 2023, holding that the Court had "related to" bankruptcy jurisdiction over the case pursuant to 28 U.S.C. §§ 1334 & 1452. On May 23, 2023, Digital Currency Group, Inc. moved to transfer the action to the District of Connecticut in light of a first-filed and already pending related action in that district after the Connecticut plaintiffs refused to transfer to this Court. The motion to transfer remains pending before Judge Liman; all other proceedings in the matter are stayed until the motion is resolved.

Explain in detail the reasons for your position that the newly filed case is related to the earlier filed case.

The factual circumstances alleged in *Moeller-Bertram v. Gemini Trust Company, LLC, et al.* ("Moeller-Bertram Action") and *Gemini Trust Company, LLC v. Digital Currency Group, Inc., et al.* ("Gemini Action") are substantially the same. Both actions center on the "Gemini Earn" program, through which participants could deposit cryptocurrency assets with non-party Genesis Global Capital, LLC ("Genesis") and earn interest on those deposits. Both actions allege that, in 2022, Genesis became insolvent and Digital Currency Group, Inc. allegedly assisted Genesis in an effort to conceal its supposed insolvency.

There are some differences between the Moeller-Bertram Action and the Gemini Action, namely: (1) Gemini Trust Company, LLC is a defendant in the Moeller-Bertram Action and the plaintiff in the Gemini Action; and (2) the Moeller-Bertram Action asserts violations of the Securities Act, while the Gemini Action asserts common law claims. Nevertheless, the shared factual background of the actions satisfies the factors relevant to relatedness: (1) the actions concern the same or substantially the same parties, property, transactions or events; (2) there is substantial factual overlap; and (3) absent a determination of relatedness there would be a duplication of effort and expense, delay, or undue burden on the Court.

Signature: /s/ Jonathan D. Polkes Date: 8/4/2023

WEIL, GOTSHAL & MANGES LLP

Firm: _____